



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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86 Chambers Street, 3rd Floor  
New York, New York 10007

January 11, 2013

**MEMO ENDORSED**

**The Application is granted.**

**SO ORDERED:**

*Paul G. Gardephe*  
**Paul G. Gardephe, U.S.D.J.**

**Dated:** *Jan. 15, 2013*

**BY HAND**

The Honorable Paul G. Gardephe  
United States District Judge  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *American Civil Liberties Union v. Federal Bureau of Investigation,*  
No. 11 Civ. 5963 (PGG)

Dear Judge Gardephe:

I write respectfully on behalf of the Government regarding the above-referenced case brought pursuant to the Freedom of Information Act ("FOIA"). Plaintiff American Civil Liberties Union's ("ACLU") FOIA request seeks records related to the eGuardian system—which provides authorized federal, state and local law enforcement agencies the ability to input and access suspicious activity reports. I write respectfully to request a one-month extension of time—until February 11, 2013—for the Government to complete production of responsive records in this case. This is the Government's third request for a modification of the Scheduling Order. The Government acknowledges that, on July 25, 2012, the Court authorized the Government's proposed schedule setting January 11, 2013 as the deadline for completing production of responsive documents. *See* Letter to the Court, dated July 23, 2012 (Memo endorsed July 25, 2012) ("July 25, 2012 Scheduling Order") (attached as Exhibit 1). The Government specifically acknowledges that the Court's endorsement of the schedule added: "The Government should be aware that the Court is unlikely to grant further requests for extensions of time." *See* July 25, 2012 Scheduling Order at 1. The Government regrets that it has been unable to complete production, but requests one additional month to complete production. As set forth more fully below, the remaining documents require significant coordination within multiple high-level Executive Branch offices. I have spoken with counsel for the American Civil Liberties Union ("ACLU"), and the ACLU does not consent to this request. Pursuant to Paragraph 1.E of Your Honor's Individual Rules of Practice, I understand the ACLU's reasons for not consenting to be based on its concerns about delay of the Government's response, as set forth in the ACLU's letter of July 23, 2012 (attached as Exhibit 2), as well as its belief that current circumstances do not warrant an extension.

As the Court is aware from the Government's prior status reports (attached as Exhibits 3 through 6), the two components that have been working to complete production over the last several months are the Office of Information Policy ("OIP") and the Office of Justice Programs ("OJP"). Since the Court authorized the Government's proposed schedule on July 25, 2012, OIP and OJP have completed review of the overwhelming majority of documents located during their search for records. In July 2012, when the Government requested the current schedule, OIP and OJP estimated that they had a combined total of 13,500 pages to review. *See* July 25, 2012 Scheduling Order at 1. OJP subsequently increased its estimate to approximately 16,000 pages. *See* Letter to the Court, dated August 1, 2012, at 1 (attached as Exhibit 3). As of today, OJP has completed its processing of all responsive documents. The Government is today releasing a batch of documents on behalf of OJP, labeled DOJ-OJP000282 to DOJ-OJP000351, to the ACLU. In addition, since the Government's last report to the Court, OJP has made the additional following determinations:

- (1) An additional 137 pages were referred to OIP for further review and consultations;
- (2) One document was referred to the Office of the Director of National Intelligence ("ODNI");
- (3) One document, consisting of 11 pages, was determined to require withholding pursuant to Exemption (7)(E);
- (4) An additional 405 pages were determined to be duplicates;
- (5) An additional 277 pages were determined to be non-responsive.

OIP, for its part, has finalized its review of the significant majority of responsive records. However, approximately 1,500 pages (less than 10% of the original estimate) remain to be finalized. OIP has completed its initial processing of these records, including an initial set of consultations and an initial round of disclosure determinations, but additional consultations are required. Unfortunately, because of the nature of the documents, processing them is procedurally complex, even more so than the Government initially expected. For that reason, the review of these documents has been centralized in OIP—the FOIA office that handles review for certain high-level governmental offices. As noted above, OIP has completed much of the work necessary to finalize the review of these documents. But in the process of reviewing the documents and undertaking consultations with relevant stakeholders, OIP has determined that additional intra-governmental consultations are necessary. The precise consultations necessary for each document varies, but among the offices necessary to consult are the Executive Office of the President, the Office of the Deputy Attorney General, the Office of the Director of National Intelligence, the Federal Bureau of Investigation, the Department of Homeland Security, and the Office of Management and Budget. Many of the documents require multiple consultations. OIP is working as quickly as possible and is aware of the need to bring the FOIA production in this case to a conclusion. OIP estimates that it can complete production in this case by February 11, 2013.

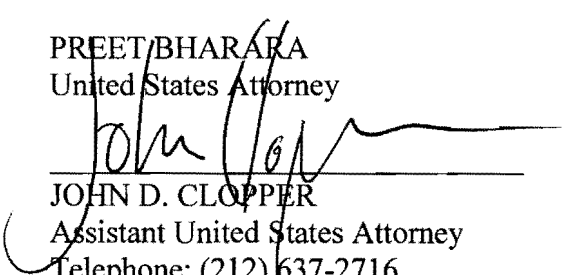
Finally, the Court's July 25, 2012 Scheduling Order set January 31, 2013 as the date for the parties to meet and confer regarding a briefing schedule and to inform the Court of the parties' proposal. The Government is not requesting a modification of that deadline at this time.

Thank you for your attention to this matter.

Respectfully,

PREET BHARARA  
United States Attorney

By:

  
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